

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED
January 28, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)

Appellee,)

V.)

VIRGIL L. YOUNG,)

Appellant.)

C.C.A. NO. 03C01-9902-CC-00055

BLOUNT COUNTY

HON. D. KELLY THOMAS, JR.,
JUDGE

(REVOCAION OF COMMUNITY
CORRECTIONS SENTENCE)

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

THOMAS T. WOODALL, JUDGE

OPINION

Defendant, Virgil Lynn Young, appeals the trial court's revocation of his placement in a community corrections program and the reinstatement of his original sentence. After a review of the record the Court finds that this judgment should be affirmed.

I. Facts

On May 2, 1997, Defendant pled guilty to three counts of violating the Motor Vehicle Habitual Offender's Act, and one count of driving under the influence, second offense. On October 28, 1997 the trial court sentenced Defendant to two (2) years on each habitual offender count, and 11 months, 29 days for the DUI. The sentences were ordered to run consecutively, for an effective sentence of 6 years, 11 months, 29 days. The trial court ordered Defendant to serve 11 months, 29 days in jail, and the remainder in community corrections.

Defendant began his community corrections program on March 17, 1998. A violation warrant was issued on April 7, 1998, because Defendant consumed an alcoholic beverage in violation of the halfway house rules. After a violation hearing on July 13, 1998, Defendant was ordered to serve six months in confinement with release to community corrections if an appropriate inpatient treatment plan became available.

Defendant was subsequently released to community corrections. A second violation warrant was issued on December 18, 1998. Defendant had two violations; (1) he was expelled from the halfway house where he was placed (because he failed to obey the house rules and participate in program activities), and (2) Defendant returned to Blount County without his probation officer's permission. After a

violation hearing on January 25, 1999, the trial court revoked petitioner's sentence to community corrections, and reinstated his original sentence of confinement.

II. Analysis

Defendant contends that the trial court erred in its determination that Defendant violated the terms of the community corrections program, and that it erred in ordering Defendant to serve the remainder of his sentence in confinement. A trial court has the discretion to revoke a community corrections sentence upon a finding that the defendant has violated the conditions of the agreement. Tenn. Code Ann. § 40-36-106(e)(4) (1997). The court may then order the defendant to serve his sentence in confinement, or re-sentence the defendant. *Id.* §§ 40-36-106(e)(2), (e)(3), (e)(4). Revocation of a community corrections program is subject to an abuse of discretion review, rather than a *de novo* standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991).

Defendant testified at the violation hearing, and admitted to all the alleged violations of his contract—the drinking that resulted in the first violation, his ejection from the second halfway house, and his physical presence in Blount County without his caseworker's permission. Thus there is a clear basis for revocation. Given this evidence, and Defendant's voluminous arrest history for public intoxication and driving offenses, we cannot say that the trial judge abused his discretion in reinstating Defendant's original sentence.

III. Conclusion

For the above reasons the judgment of the trial court is affirmed.

THOMAS T. WOODALL, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JERRY L. SMITH, Judge